

The Political Rationale of the EU Constitutional Treaty: Hegemonic Consideration for the Core Member States*

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The constitutional draft of the EU represents remarkable progress compared with the current Treaty of Nice. From a political perspective, the proposed 'Constitutional Treaty' has the attributes more of an international treaty than a constitution, and reflects rather incomplete constitutionalism. The EU constitution is regarded as a carefully contrived compromise between the supranational federalist and intergovernmentalist positions. The proposed EU Constitution has grown out of constitutional politics strategically constructed by the core Member States, whose national governments have driven the process of EU constitution-making. We argue here that it is the major Member State-led constitutional politics underlying hegemonic intergovernmental governance that will continue to prevail, and that the concept of EU constitutional federalism seems, at present, to be a rather far off goal.

Keywords: *EU constitutionalism, Intergovernmentalism, Supranationalism, Enlargement, European identity*

1. INTRODUCTION

Discourse on constitutionalism has been the main subject of the debates on European integration and establishment of a collective European identity. It is considered by the participants in these debates that identification with the supranational organization is essential to constructing a viable political community made up of the citizens of EU countries. However, among the citizens of the EU member states the need for identification with the EU to achieve the Union's longer term objectives is not a widely held belief. In that context, we must assume that a constitution is only one element in an extensive, social process that is shaping the identities of citizens (Bogdandy 2004: 1-3). Deleting the word 'federal' from Article 1 of the final draft of the EU Constitution and replacing with the term 'a union of European States' may imply that the EU cannot be a federal state for the time being (McKay 2004: 23). It can be nothing more than a constitutional treaty in that the 'Constitution' can only be made by third parties, that is, the Member States. However, according to Riker (1975)'s broad definition of federalism, the EU does meet the minimum characteristics used to describe a federal-like state.¹ In this context, it is claimed that the EU constitution is characterised by, and reflects, a European collective identity, 'as a people, as a nation, as a state, as a Community, as a Union.' (Weiler 2002: 569).

The ambitious attempt to adopt a constitution for Europe was launched with the Laeken declaration of December 2001 and culminated in June 2004 with a consensus on the adoption

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¹ For further details, see Riker, W. (1975).

of the Constitutional Treaty. The Laeken Declaration allowed even potential applicants² to participate in the proceedings but without the power to affect the resulting consensus among the other member states. Following the European Council meeting in Brussels in June 2004, the draft treaty was submitted to an Intergovernmental Conference (IGC) composed of representatives of the governments and of future member states. Agreement was reached on 18 June 2004 and finally signed by the Heads of the 25 member states in Rome on 29 October 2004, due to come into force after the ratification by all member states. While it is not assumed that the Constitution reflects the founding fathers' ideal objectives, the adoption of a single document for the EU, replacing all existing treaties and reformulating and simplifying the institutional framework and decision-making procedures, is a historic progress towards a closer, transparent and more democratic European Union (Schiavone 2004: 45-46). In legal and practical terms, the European constitution does not replace the national Constitutions of the countries of Europe. It coexists with these constitutions and has its own justification and its own autonomy.³ From a political dimension, it would be more accurate to regard the new text as another international treaty rather than as a constitution. Nonetheless, the constitutional finality of the EU represents a very remarkable progress in comparison with the current Treaty of Nice.

The EU Constitution itself will not have the power to make Member States to conform: there will be an inevitable tension between intergovernmentalism and constitutionalism. The proposed 'Constitutional Treaty'⁴ has the attributes of an international treaty, and reflects a 'weak constitutionalism' (Lindseth 2001). The EU might be well advised to bow to the tension between intergovernmentalism and constitutionalism and accept a more conventional transnational governance within the European Union (Maduro 2004).

In this article, an attempt is made to sketch out the political hegemony among the Member States in the wake of European constitution-making process. We would argue that for the time being core Member States-led *constitutional politics* underlying hegemonic intergovernmental governance proves more feasible than the EU constitutional federalism which is the current goal. The original concept of EU constitutionalism is a rather far off goal.

2. THE CREATION OF A EUROPEAN CONSTITUTION AND SPECIFICITY

The EU appears to be a system of *governance* and is unlikely to become a federal state in the near future: the constitution cannot be established by European *demos*, but only by the Member States. Until full agreement of the member states is achieved it can be nothing more than a constitutional treaty. More accurately, the EU can be said to be 'a mix of intergovernmental, supranational and transnational polity' (Eriksen et al. 2004: 12).

Whether the European Union needs a constitution has been broadly debated. Much attention has focused on whether the EU should have a constitution, what it should consist of

² Bulgaria, Romania and Turkey participated in all the meetings of the IGC.

³ See European Communities (2004: 3) and also *EIU Viewswire* (2004). The constitution must be ratified by all 25 member states and by the European parliament. However, almost half of these member states – the UK, Ireland, Denmark, the Netherlands, France, Belgium, Luxembourg, the Czech Republic, Spain and Portugal – opted to hold a referendum to ratify the EU constitution before November 2006, and the chances that all these countries will respond positively are small.

⁴ *Statement to Parliament on the EU Constitutional Treaty* (2004).

and how best the EU could achieve the objectives and aims of a proposed EU constitution.

Legal and political scientists have often suggested that the EU already has a constitution – a notion that is disputed. The European Court of Justice (ECJ) worked as the leading ‘constitutionalising actor’ by extracting constitutional principles originating in a body of laws that also included national constitutions. Thus the process of constitutionalisation has strengthened the policy-making role of the ECJ. The Court has directly reinforced the core constitutional principle of sovereignty at the EU level. In addition, the ECJ consolidated the doctrine of indirect effect in that Member State’s judges are always obliged to interpret national rules in accordance with EC law (Fabbrini 2004: 560). Further, Intergovernmental Conferences (IGCs) are perceived as being a part of Treaty reforms (Closa 2004: 183).

We would like to emphasise here that there is a difference between constitution and constitutionalism. Constitutionalism encompasses the values, often inexplicable, that underlie the material and institutional provisions in a particular constitution. Thus, distinguishing constitution from constitutionalism would allow us to concede, for example, that some European countries, such as Italy and Germany have constitutions that whilst quite different in their material and institutional provisions (Weiler and Wind 2003: 3) have a similar constitutionalism. Therefore, it is critical that an EU constitution should take account of the various contexts that produce EU law and shape its operation in practice.

It is argued that EC and EU institutions cannot secure a constitutional legitimacy ‘on par with that of national institutions’ (Lindseth 2001: 147). It is assumed that in time the obstacles to constitutional legitimacy at the supranational level may be overcome, although so far Europe has been unable to overcome them. In the EU, political identity and political legitimacy rests with the Member States and their respective national political institutions as the legitimate manifestations of popular sovereignty and self-rule (Lindseth 2001: 147).

What do we mean by ‘constitution’? Here it is useful to outline possible interpretations based on contending scholarly analyses. The European Convention draft treaty for an EU constitution attempts to solve the underlying problems. It aims at simplifying the existing system of EU legal acts in two stages. First, to end the distinction between the EU and the EC, and unite the three different pillars. This would reform the existing EU law system, which in each pillar has its own set of legal boundaries. Second, to create a new typology of legal acts (draft Art. 1-32). The different categories of legal acts would be reframed with terminology most like the various national legal systems. The Convention’s draft treaty establishing a constitution for Europe requires some clarification of the relationship between the member states and the EU institution in implementing powers.

In the constitution issues of the early stages of European integration, the primary concern centred on whether, how and according to which models the European Union should acquire a constitution. The Community treaties that were enacted in the past were not per se considered to be ‘constitutional’ in either character or status, although the term ‘constitutional treaty’ was used in some of these treaties. Given that the European Court of Justice (ECJ) referred to the Community treaties as being ‘constitutional in character’ of an EC or EU constitution that is already ‘in force’ is no longer merely a vague occurrence, but a ‘suggestive formula.’ Advocates of a federal state or state-like entity have striven to make their mark on the political thinking of the contemporary European people in terms of upgrading the EC’s legal order (Snyder 2003: 14-15). It should be noted that a European constitution can ‘never be a condition, but must always be a development, remain a process’ (Snyder 2003: 16).

Strictly and formally speaking, the three founding Treaties of the European Communities

were international treaties. However, it is acknowledged that they established the Community legal system as an autonomous legal order, discernible from the national legal order. The objectives of these treaties related to the functional integration of the member states. Moreover, they were characterised as being a stepping stone in the path to the wider process of regional integration in Europe. Furthermore, the ECJ gradually but steadily made it clear that it regarded certain norms of Community legal order as binding on the Community as well as on the national legislatures. That is to say that the EU already has a 'substantial' constitution. As of 29 October 2004, the EU adopted a single document, or compilation of documents, the declaration of the Charter of Fundamental Rights of the European Union, which can be perceived as a first step in the formal constitutionalisation of the EU. Therefore, the EU can be said to have a 'formal' constitution even though, for it to come into effect, it must be ratified by all member states (Menéndez 2003: 14-21). Pointing to the weakness of the EU legal system, regarding the formal legal validity of the EU constitution, Neyer (2004: 35) maintains that:

[T]he legal output of the EU can easily be compared to an average nation-state and surely surpass that of any other international organisation. Although the EU has become neither a state-like entity nor possess any powers to coerce member states into compliance, its rules are almost always respected Whereas a central body with superior resources is clearly absent, the EU nevertheless works sufficiently well without having either to wield the threat of brute force or to replicate the model of national majoritarian democracy. To be sure, efficient and effective governance does not happen.

Despite these features, overall commentators on the EU legal system as a constitution also had to consider the democratic dimension, e.g. 'democratic deficit.' As Menéndez (2003: 26) argued in defence of a 'normative' constitution,⁵ "the [European] Union is already constituted *materially*, but it stands to be reconstituted *democratically*" (original emphasis) in the postnational setting of the Union. For example, in relation to the Charter of Fundamental Rights, while the Charter is a part of the EU's written constitution, it is important to judge whether the Charter is democratically sophisticated as some scholars have pointed to the lack of democratic legitimacy in the Charter-making process. Notwithstanding its positive effect, the Charter has not demonstrated any democratic mandate because the representatives of the Convention were not elected by the people, and thereby comprise an undemocratic constitutional assembly. For example, it seems likely that the new constitution could be ratified by the member states without any consultation other than a referendum. It has been argued that the constitutionalisation of the EU was dealt with unilaterally, as "a constitution *for* European Citizens could usurp the place of a constitution *by* European citizens" (Menéndez 2003: 34).

⁵ Menéndez argues that the EU does not have a normative constitution framed within a deliberative democratic basis. European citizens do not see themselves as the authors of the EU constitution. It is undeniable that there is no evidence of the material constitutions of the EU having been endorsed by the citizens of Europe keen to demonstrate a coherent common will. Menéndez suggests a three-fold conceptualization of the constitution by distinguishing between the formal, the material and the normative origins of the constitution.

3. CONSTITUTIONAL AMBIGUITY: INTERGOVERNMENTAL *VERSUS* SUPRANATIONAL RATIONALITY

There is a growing tension emanating from a Constitution which was largely developed as a function of economic integration. The constitutionalisation of the Treaties created a constitutional body but a 'body' without a 'soul'. Thus, the European Constitution is characterised as a simple functional consequence of the process of market integration with no consideration being given to the values and norms it essentially embodies: it occurred as a logical consequence of the constitutionalisation process without any constitutional debate. This raises some questions about the legitimacy of the process of constitutionalisation (Maduro 2003: 76-77). Lindseth (2001) would define the nature of the EU constitution as 'weak' constitutionalism. It is implied that much of the legal writings have tended to uncritically acknowledge the resultant outcome of constitutionalism without identifying the essence of a constitution. However, empirically, constitutionalism stemming from the development of European integration was a peculiar feature that was never clearly manifested in other examples.

For instance, in terms of the process of constitutionalisation, it was 'incremental' and 'bottom-up.' It was a product of both intergovernmental developments in the form of Treaty revisions, and constitutional interpretation by the EU Court of Justice in cooperation with a constituency of legal and political actors at national and supranational levels (e.g. particular national courts and the European Commission) (Maduro 2004: 17). The legislative and constitutional processes were orchestrated by the desire for the search for intergovernmental legitimacy.

In addition, European constitutionalism was constantly questioned and constrained by national constitutions and was dependent to a large degree on the 'veto right' of national courts. Under these circumstances, some scholars, have called it a 'weak constitutionalism' (Lindseth 2001) or 'low intensity,' or 'defensive constitutionalism.' (Maduro 2004). Despite this, the EU is not a purely intergovernmental organisation as it affects the lives of individuals when it exercises certain elements of governance over the member states (Burchill 2003: 17). The EU constitution represents a carefully contrived compromise between the positions of the supranational 'federalists' and the 'intergovernmentalists' while at the same time acting as a bridge between the large and the smaller member states (Evert and Keohane 2003: 169).

During the 1990s, the process of European integration gained a new momentum, and this has further underlined the need to identify the nature and status of the EU. Thus the Treaty on European Union (TEU) made it clear that the democratic legitimacy of the EU could no longer build on the Member States (Eriksen and Fossum 2004: 445). However, the draft did not abandon the principle of Member State sovereignty. The treaty basically protected national veto powers in matters of constitutional change as well as a strong commitment to the protection of national identities. The IGC method of treaty-making and change is fundamentally intergovernmental with member states being the dominant actors, and parliamentary and other deliberating bodies playing a marginal role. The draft constitution was presented as and interpreted as being a compromise (Eriksen and Fossum 2004: 452-454). On the one hand, EU constitution can only be described as relating to national constitutions and other national and international settlements. The national constitution is relevant to the development of EU constitutionalism. On the other hand, the institutional and

constitutional processes of the polity formation need to be viewed on their own terms, that is, the 'post-national' or 'post-state' reference to the EU matters (Shaw 2001: 9-10).

There is no more widely-contested political or legal discourse than that of the rule of law. As was the case with the rule of law, constitutionalism is composed of various competing perspectives and conceptions, ranging from conservative liberal to radical social democratic.

According to Birkinshaw (2003: 5), "it is constitutionalism that is supranational: it may have been influenced by national concepts but it addresses different multi-level organisations and governance." In this sense, the Community was a manifestation of supranationalism without a constitution and with no real terms of constitutionalism despite being developed within the Maastricht and Amsterdam treaties, which were referred to as a 'constitution.' Maastricht and Amsterdam were concerned with the processes of deliberation and with protection of human rights at the EU level.

The eastward enlargement of the EU allowed for a channelling of the four treaties – in reality on Treaty on European Union (TEU) into a more simple and straightforward demonstration of constitutional fundamental principles. The TEU is a constitution for the EU, including the Community. The Convention constitution was submitted to the EU summit on 20 June 2003 at Thessaloniki, and finalised on 18 July 2003. The constitution displays some weaknesses and limitations. Europe is not ready to adopt a full-fledged constitution ratified by the majority of its citizens: the absence of *demos*. To put it simply, there is no one European 'people' (as opposed to the 'peoples' of the several member states) capable of ruling through its own institutions (i.e. the EC/EU), as its 'constitutional' representative (Lindseth 2001: 145-146).

Whereas the fundamentals of the Constitution of the United States have not changed over the past two centuries, the European 'Constitution' will have to be readjusted in the relatively future. Theoretically, Europeans will have the most 'democratic' basic principles, as the ratification of the constitution requires the unanimous approval of all the Member States (Mény 2003: 62). Policy-making efforts at the 'constitutional' level are infrequent in the US. In the EU, policy-making at the 'constitutional' level occurs at conferences involving the Member States. In recent years, these intergovernmental conferences have frequently been the stage for policy making with five major intergovernmental conferences in the last eighteen years (1986, 1993, 1996, 2000, 2003) – and they have often left their mark on institutions and policy outputs in the EU (Hoornbeek 2004: 462-463).

Constitutionalizing process in the EU includes the work of the European courts, the European Council, the European Parliament, and countless committees, agencies and policy networks. These are not limited to European Union institutions but include the courts, parliaments and administrations of the Member States. Snyder suggests that "political and economic processes are likely to be more important in the development of the EU constitution than is the law alone" (Snyder 2003: 63).

When it comes to the tension between intergovernmentalism and supranationalism, theoretical debate about European integration becomes mired in an endless debate over the characterisation of the EU as either supranational or intergovernmental. There is a need to move beyond the current supranational-intergovernmental dichotomy. This is because some scholars have found a supranational rationality in the very intergovernmental institutions and decision-making networks that exist today (Branch and Øhrsgaard 1999: 123-143).

For example, comitology as the notion of transnational governance explored in more supranational theories such as neo-functionalism (that have traditionally been used to analyse European integration), may be seen as 'supranational' in the sense that it operates under the

institutional umbrella of the European Commission. As a result, the Commission representatives have control over the committee's agenda. On the other hand, the system is understood as being 'intergovernmental', in the sense that the committee members are representatives of national bureaucracies, indicating that national governments' perspectives will be brought to bear on the regulatory issues being considered. The definition of the national interests is not only the result of decision-making within Member States but also to a substantial extent, the result of interactions between Member States' representatives and supranational actors. Any initial definition of national interest seems to be redefined and reconstructed through social interaction at the EU level. The Member States' actors are becoming more socialised as European representatives (Lewis 1998: 480; Beyers and Dierickx 1998: 292). In legal terms, the EU law is enforced by two sets of courts: those of the Member States, and those of the EU. For operational purposes, co-operation between both parties is of great significance. Any sharing of functional procedures means a sharing of power, even though there this will introduce the potential for competition between them (Davies 2004: 2). Likewise, legitimating belief or legitimacy traditionally represents a condition of dual popular sovereignty which is shared across different levels of governance (state and EU-level).

The discourse of constitutionalism has tended to increase the suspicions that the EU wants to transform itself into an independent state. The pursuit of constitutional finality is capable of placing the very foundation of the EU system at risk, by wiping out its *adaptive* character (Weatherill 2002). Does the European Union have the potential to provide public order in Europe without becoming a state? Most views on this are somewhat sceptical. It is recognised that the advent of an EU constitution cannot allow for state-like structures in the near future.

4. HEGEMONIC CONSIDERATION FOR THE MAJOR MEMBER STATES

The objective of this section is to give a coherent analysis of the thinking about how the process of constitutionalisation paves way for a deepening of constitutionalism in the wake of ongoing European enlargement. The relationship between the present enlargement process and the development of the constitutionalisation process in the EU is a complex one. Much of the literature on enlargement of the EU anticipated significant power asymmetry among the existing Member States and the candidate states, at the negotiating table. While there is a high degree of recognition in the existing member states, especially amongst the political leaders, that the present enlargement project will pay dividends in political and security terms, translating the post-Communist regime into a stable community of strong democracies and economies, the EU for some reason seems to be a rather 'reluctant landlord' (Walker 2003: 366). We would posit that EU constitutionalism has had a substantial impact on the legitimisation of the CEECs' post-Communist regimes. In all of these countries, the adoption of a new constitution was viewed as a critical break with the Communist legacy, leading to the substantial remodelling of a pre-Communist regime (Walker 2003: 371).

More generally, adoption of the Constitution has been accompanied by, or been derived from fundamental changes in political and economic regime. In other words, it has been the outcome of any revolutionary or memorable 'constitutional moment', exemplified by the post-World War II constitutions of western Europe, the post-Communist constitutions in the CEECs and the post-authoritarian constitutions in Third Worlds such as the countries of Latin

America, Asia, etc. Rather, over the last few decades the EU has undergone a ‘quasi-constitutionalisation’, to use Hirschl’s phrase, of the EC’s legal order, mainly interpreted by the ECJ (Hirschl 2004: 2). Hirschl argues that the political leaders in the core EU Member States have attempted to adopt a *strategic* approach to the EU constitution-making process. In other words it is the power of the combined bureaucracies, and economic and judicial elites in the EU institutions, the ‘hegemonic’ political power-holders, e.g. major member state governments that has driven the EU constitutional reform. As Hirschl (2004: 22) maintains:

[T]he current EU constitutionalisation process is best understood as a type of “hegemonic preservation” measure undertaken by self-interested, risk-averse political power holders who, in an attempt to mitigate the uncertainty and potential threats posed by EU enlargement, may seek to entrench their privileges, worldviews and policy preferences through constitutionalisation.

The rationale for the process being based on ‘hegemonic preservation’ is manifest in some of the specific discourses proposed by the drafters of the constitutions. The proposed constitution formally incorporates the criteria for joining the EU adopted at the Copenhagen Summit of the European Council in 1993: a) proof of respect for democratic principles, the rule of law, human rights, and protection of minorities; b) the introduction of market economies that are able to adapt to the competitive market forces of the EU; and c) the ability to abide by the obligations of membership, including formal entrenchment of national legal systems in parallel with EU laws.

Although the process of constitutionalisation and its reformulation have been accompanied by enlargement every attempt has been made to constrain the influence of the newer Member States. The EU constitution could be perceived as a device to increase the credibility of interstate commitment in an enlarged Europe. The post-Communist accession countries are not seen as being an integral part of Europe: there is a perception that they are backward and less sophisticated than other parts of Europe. Further progress along the EU constitution path would act as a binding mechanism that would increase confidence in the enlarged EU and would help to produce a convergence in the worldviews and policy preferences of the accession countries towards those of the core EU Member States (Hirschl 2004: 25).

The EU has established an ‘incomplete’ constitutional arrangement. The EU has the problem of being constituted only of democratic states but of having no democracy in its workings, a problem inherent in such high level integration. The EU is seen as a supranational entity, exhibiting state-like feature without exactly being what is understood by international law as a state. Given then that the EU is not a state, it is also not a typical intergovernmental organisation: it can be regarded in Burchill’s (2003: 16) terms an ‘international legal person’.

In this context, Maduro (2004: 3) suggests that the significance of constitutionalism is changing in the EU and “its function depends more generally on the relationship between constitutionalism and intergovernmentalism.” Based on the dual character of supranationality, for example, the adoption of normative supranationality (the adoption by European rules of constitutional federal authority over the Member States’ rules) was connected to intergovernmental decision-making (Member States’ control and power of veto over the decision-making process). Taken together, the reality is an aggravation of the tension

between constitutionalism and intergovernmentalism in the EU. Here using the concept of 'intergovernmental majoritarianism', that is, the antithetical outcome emerging from continued contradiction and adaptability between constitutionalism and intergovernmentalism, Maduro (2004: 48) argues that the move towards a majoritarian system may be 'unavoidable.'

With the advent of Constitution, combined with Europe's intergovernmental system of governance, Europe should require the revolutionary counter-discourse of the intrinsically embedded politico-cultural process (Lindseth 2001: 163) to evade the 'constitutionalism thesis' if we would like to achieve the development of a reliable and independent constitutional legitimacy for Europe. However, even the federalists, while demanding a 'Constitution' for Europe, explicitly reject the very basis of a federal constitution. Whereas EU leaders are not taking EU constitutional reform seriously, the process of agreeing on an EU constitutional treaty has come up against a collision of national political interests in Intergovernmental Conferences. EU intergovernmental governance will prevail in favour of the core Member States for the next wave of European enlargement. (Robinson 2004: 1-3).

The EU Constitution is politically designed and constructed. 'Constitutions do not fall from the sky' (Hirschl 2004: 32). The emergence of the enlargement and the European constitutionalisation processes cannot be coincidental. On institutional dimension, new voting system adopted as a result of constitutionalisation process, the EU might be effectively governed by the "big four" Member States – Germany, Britain, France and Italy. For example, a 'double majority' voting system makes Germany more powerful within the EU (from 9.2 per cent under Nice to 18.2 per cent) and deflates the power of medium-sized Member States. The EU constitution may therefore be interpreted as an attempt to increase the discretion of the core Member States through the introduction of a binding mechanism that would effectively reduce the threat and influences of accession countries (Hirschl 2004: 29).

5. CONCLUSION

This article does not pretend to make a complete analysis of the politics of European constitutionalism. Rather, it has sought to explore the political dimension of the EU constitutional treaty. We examined what lies behind the rationale for the EU Constitution and to what extent the Constitution is being substantially and strategically constructed by the major EU Member States.

At the same time, given that the proposed EU constitution displays some weaknesses and limitations, we examined how the tensions between constitutionalism and intergovernmentalism will impact on EU constitutional politics in the near future. The EU is not ready to adopt a full-fledged constitution ratified by the majority of its citizens. The supranational institutions of the EU lack constitutional representatives. Over the last few decades the EU has undergone a 'quasi-constitutionalisation' of the EC's legal order, largely interpreted by the ECJ. EU political leaders in the core Member States have striven to choose a strategic approach in their focus on the constitution-making process in the EU.

The EU was established as an instrument of interstate cooperation. Over time this has changed, as has the international context. The EU possesses some state-like features, but is not a state as understood in international law. The EU constitution was a product of both intergovernmental developments in the form of Treaty revisions and constitutional

interpretations by the EU Court of Justice. The EU constitution is regarded as a carefully contrived compromise between the supranational federalist and intergovernmentalist positions. The European constitution was presented as, and is understood to be, a compromise and thus the draft constitution has retained the principle of Member State sovereignty.

The EU Constitution was born out of *constitutional politics* strategically constructed by major Member States independent of how much the EU constitution has been constitutionalised in the light of proto-type constitutionalism. It can be argued that we have found supranational element in the very intergovernmental institutions and decision-making networks. Any initial definition of Member State's interest is likely to be redefined and reconstructed through social interaction at the EU level. Thus we need to move beyond the conventional supranational-intergovernmental dichotomy. While constitutionalism is supranational, it increases the tension between constitutionalism and intergovernmentalism in the EU. It is evident that major Member State governments have been those major power in the EU constitution-making. In practice, the functioning of the EU depends to a great extent on the tension between the processes of constitutionalism and intergovernmentalism. Coupled with the rationale for 'weak' EU constitutionalism, we would argue that core Member State-led constitutional politics underlying hegemonic intergovernmental governance may continue to prevail while the original concept of EU constitutional federalism seems, at present, to be a rather far off goal.

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